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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

JAMES BELLINO et al.,	
Plaintiffs and Appellants,	G057255 consol. w/ G058129
v.	(Super. Ct. No. 30-2018-01008497)
SHANNON BEADOR,	O P I N I O N
Defendant and Respondent.	

Appeal from an order of the Superior Court of Orange County, Layne H. Melzer, Judge. Affirmed.

Brown, Neri, Smith & Khan and Geoffrey A. Neri for Plaintiffs and Appellants.

Beitchman & Zekian, David P. Beitchman and Paul Tokar for Defendant and Respondent.

Shannon Beador and Tamra Judge, cast members of the nationally televised reality show the "Real Housewives of Orange County" (RHOC), appeared on a gossip podcast. During the podcast, Beador and Judge made comments about James Bellino, the ex-husband of Judge's former RHOC castmate. Bellino and his company, Jump Management Co., LLC (JMCO) (collectively referred to as Plaintiffs), sued the women for defamation and other related claims.

Beador filed a special motion to strike the complaint pursuant to Code of Civil Procedure section 425.16 (anti-SLAPP motion).[1] The trial court granted Beador's anti-SLAPP motion in its entirety. The court subsequently awarded Beador attorney fees and costs. Bellino and JMCO appealed from both orders. Finding no error, we affirm the orders.

FACTS

I. *Factual Background*

RHOC is a reality television show that documents and dramatizes the lives of an ensemble cast of women living in Orange County, California. Beador has been a cast member since 2014. Judge has been a RHOC cast member since 2007.

Bellino is a businessperson and entrepreneur. He is the managing member of JMCO. JMCO is part owner of Sky Zone Trampoline Park (Sky Zone).

Bellino's ex-wife Alexis Bellino[2] was a cast member of RHOC from 2008 to 2013. Alexis and Bellino were married throughout the time that Alexis was a cast member of RHOC. Bellino was never a cast member of RHOC, but was occasionally featured. On June 21, 2018, Bellino filed for divorce from Alexis.

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[1] All further statutory references are to the Code of Civil Procedure, unless otherwise indicated.

[2] We refer to Alexis by her first name for ease of reference and intend no disrespect.

II. *Statements Made in Podcast*

On June 26, 2018, Judge and Beador appeared at the Irvine Improv comedy club to appear on the podcast the "Juicy Scoop" with Heather McDonald before a live audience. Part of the conversation involved the recent Bellino divorce. Judge said about the Bellinos, "I have a theory. Everything, everything's in her name. He's going to go to jail. Yeah, he's a shady motherfucker."

McDonald asked, "Do they still have the trampoline parks? Does anyone know?" The exchange continued as follows: "[Ms. Beador]: No. No. I heard that they don't. [¶] [Ms. McDonald]: They sold it? [¶] [Ms. Beador]: I heard they don't because they were sued. [¶] [Ms. McDonald]: So there wasn't, like, a lawsuit of someone that, that -- [¶] [Ms. Beador]: No, they were, they were sued. Kids . . . People [sic] get their . . . I won't let my kids go because people get paralyzed, and they, and apparently that happens."

III. *Plaintiffs' Complaint Against Beador*

Plaintiffs' complaint pleaded six causes of action against the two defendants, Judge and Beador. The first cause of action for defamation per se (claim 1), was alleged by Bellino against Judge. Bellino alleged a cause of action for defamation (claim 2) and Plaintiffs' alleged false light (claim 4) against both Judge and Beador. As to Beador, claim 2 alleged, "On or around June 26, 2018, Beador stated to numerous other persons (as many as 100 other persons, if not more) that . . . Bellino didn't have a trampoline business anymore because 'people get paralyzed' at that business." JMCO stated claims against Beador for trade libel (claim 3), intentional interference with prospective economic advantage (claim 5), and negligent interference with prospective economic advantage (claim 6), all arose from the same statement alleged in claim 2.

IV. *Beador's Anti-SLAPP Motion*

In response to the complaint, Beador and Judge filed anti-SLAPP motions.[3] The trial court granted Beador's anti-SLAPP motion in its entirety. It reasoned Beador's statements were protected speech under section 425.16, subdivision (e)(3). The court explained the statements did not "'clearly convey a meaning'" which "'tends to directly injure.'" The court also stated Plaintiffs failed to submit "competent evidence of special damages" because the trial court sustained Beador's objections to Bellino's declaration regarding damages.[4]

As the prevailing defendant on the anti-SLAPP motion, Beador moved for attorney fees. She sought $220,894.55 for attorney fees and costs. The trial court, after supplemental briefing on the issue, reduced the total amount to $137,340.25.

DISCUSSION

I. *Pertinent Anti-SLAPP Law*

"'[S]ection 425.16 sets out a procedure for striking complaints in harassing lawsuits that are commonly known as SLAPP suits . . . , which are brought to challenge the exercise of constitutionally protected free speech rights.' [Citation.] A cause of action arising from a person's act in furtherance of the 'right of petition or free speech

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[3] Judge's anti-SLAPP motion is the subject of another appeal. (*Bellino, et al. v. Judge* (Oct. 23, 2020, G057450) [nonpub. opn.]

[4] The portion of Bellino's declaration at issue read as follows: "'Beador knew of the popularity of Sky Zone in the Orange County area and knew of those existing economic relationships or should known [sic] of those relationships. Beador intended to disrupt those relationships and knew or should have known that disruption would result when she made the statements about Sky Zone at issue in this case. Disruption of those relationships has occurred as visitors who would otherwise regularly visit Sky Zone no longer do because they have heard that "people get paralyzed" there. In addition, I had the opportunity to purchase three trampoline parks before Beador's statements were made. This opportunity would have been extremely profitable for me. After learning of Beador's statements, the investors related to this deal were no longer interested in investing in trampoline parks and the deal fell through.'"

under the [federal or state] Constitution in connection with a public issue shall be subject to a special motion to strike, unless the court determines that the plaintiff has established that there is a probability' that the claim will prevail. (§ 425.16, subd. (b)(1).) 'The anti-SLAPP statute does not insulate defendants from *any* liability for claims arising from the protected rights of petition or speech. It only provides a procedure for weeding out, at an early stage, meritless claims arising from protected activity. Resolution of an anti-SLAPP motion involves two steps. First, the defendant must establish that the challenged claim arises from activity protected by section 425.16. [Citation.] If the defendant makes the required showing, the burden shifts to the plaintiff to demonstrate the merit of the claim by establishing a probability of success. We have described this second step as a "summary-judgment-like procedure." [Citation.] The court does not weigh evidence or resolve conflicting factual claims. Its inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made a prima facie factual showing sufficient to sustain a favorable judgment. It accepts the plaintiff's evidence as true, and evaluates the defendant's showing only to determine if it defeats the plaintiff's claim as a matter of law. [Citation.] "[C]laims with the requisite minimal merit may proceed."' [Citation.] 'We review de novo the grant or denial of an anti-SLAPP motion.' [Citation.] As to the second step inquiry, a plaintiff seeking to demonstrate the merit of the claim 'may not rely solely on its complaint, even if verified; instead, its proof must be made upon competent admissible evidence.' [Citations.]" (*Sweetwater Union High School Dist. v. Gilbane Building Co.* (2019) 6 Cal.5th 931, 940 (*Sweetwater*).) "If the trial court's decision denying an anti-SLAPP motion is correct on any theory applicable to the case, we may affirm the order regardless of the correctness of the grounds on which the lower court reached its conclusion." [Citation.] (*City of Alhambra v. D'Ausilio* (2011) 193 Cal.App.4th 1301, 1307 (*City of Alhambra*).)

II. *First Step: Protected Activity*

The trial court determined Beador met her burden as to the first step of the anti-SLAPP analysis. We agree.

The anti-SLAPP statute provides heightened procedural protection to a defendant's speech in only four categories, all of which must be "'in connection with a public issue.'" (§ 425.16, subds. (e)(1)-(4).) Beador's anti-SLAPP motion was based on section 425.16, subdivisions (e)(3) (category 3) and (e)(4) (category 4). Category 3 pertains to "statements made in a place open to the public or a public forum[5] in connection with an issue of public interest." (§ 425.16, subd. (e)(3).) Category 4 is a catchall provision, which applies to "any other conduct in furtherance of the exercise of the constitutional right of petition or the constitutional right of free speech in connection with a public issue or an issue of public interest." (§ 425.16, subd. (e)(4).) "'California cases establish that generally, "[a] public issue is implicated if the subject of the statement or activity underlying the claim (1) was a person or entity in the public eye; (2) could affect large numbers of people beyond the direct participants; or (3) involved a topic of widespread, public interest." [Citations.] . . .' [Citation.]" (*Albanese v. Menounos* (2013) 218 Cal.App.4th 923, 934 (*Albanese*).) However, "'"'[A] matter of concern to the speaker and a relatively small, specific audience is not a matter of public interest.'"'" (*Rand Resources, LLC v. City of Carson* (2019) 6 Cal.5th 610, 621.)

Plaintiffs contend the public is merely curious about them, and the statements at issue do not rise to a matter of public interest. *Albanese* is instructive on

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[5] Plaintiffs all but concede the public forum issue, "the dispositive issue under both categories 3 and 4 is whether the statements were made in connection with a public issue or an issue of public interest, irrespective of whether made in a public forum." There is nothing in the record to suggest the Irvine Improv was not sufficiently open to the general public to be considered a public forum. Furthermore, the interview was part of a podcast, published for free on the Internet. The public forum requirement was satisfied.

this factor. It concerned a defamation action by a celebrity stylist against television personality Maria Menounos based on allegations Menounos falsely and publicly accused Albanese of theft. (*Albanese*, *supra*, 218 Cal.App.4th at p. 936.) The appellate court affirmed the denial of Menounos's anti-SLAPP motion, determining that even assuming that Albanese was "rather well known in some circles for her work as a celebrity stylist and fashion expert, there is no evidence that the public is interested in this private dispute concerning her alleged theft of unknown items from Menounos . . . . In short, there is no evidence that any of the disputed remarks were topics of public interest." (*Ibid*.)

Albanese involved a private dispute between two people in the public eye. By contrast here, Bellino voluntarily appeared on a reality show based upon the participant's marriages, divorces, and their lifestyles. The trial court correctly analyzed whether Beador's comments were connected to Bellino's public persona as a matter of public interest, "The record shows that Bellino too has sought public attention—he has his own public [Web site] where he posts about some aspects of his life and he chose to appear, at least on some occasions, on the show. He has not sought such pervasive attention to all aspects of his life such that everything about him can reasonably be deemed in the public interest, however [¶] . . . [¶] Given the sprawling nature of [the RHOC] . . . it would seem how the participants made money would be of interest to those who watch the show. The court finds that the comments by Beador that Bellino is suing on are protected speech under [section] 425.16[, subdivision] (e)(3)."

Indeed, this situation more closely matches that of *Seelig v. Infinity Broadcasting Corp.* (2002) 97 Cal.App.4th 798 (*Seelig*).) There, plaintiff appeared on the reality television show, Who Wants to Marry a Multimillionaire. (*Id*. at p. 801.) The appellate court determined that statements made on a radio show regarding a contestant's participation on Who Wants to Marry a Multimillionaire satisfied the public interest standard. It explained, "The offending comments arose in the context of an on-air discussion between the talk-radio cohosts and their on-air producer about a television

show of significant interest to the public and the media. This program was a derivative of Who Wants to Be a Millionaire, which had proven successful in generating viewership and advertising revenue. Before and after its network broadcast, Who Wants to Marry a Multimillionaire generated considerable debate within the media on what its advent signified about the condition of American society. One concern focused on the sort of person willing to meet and marry a complete stranger on national television in exchange for the notoriety and financial rewards associated with the [s]how and the presumed millionaire lifestyle to be furnished by the groom. By having chosen to participate as a contestant in the [s]how, plaintiff voluntarily subjected herself to inevitable scrutiny and potential ridicule by the public and the media." (*Id*. at pp. 807-808, fn. and italics omitted.)

The Bellinos' lifestyle and divorce were fodder for public interest due to their participation on RHOC and the sprawling nature of the show into its participants' lives and marriages. Here, there is evidence that Bellino's fame was linked to his depiction as a businessman on a popular television show. The statements concern Bellino's business affairs, which he willingly thrust into the limelight by appearing on a popular reality show. The businesses of the RHOC families are a common topic of the franchise and are consistent with the exposure Bellino has enjoyed for years. This interest of the viewers and fans into the mundane topics of reality television stars is what propels the franchise and Bellino's notoriety. The court did not err.

III. *Second Step: Probability of Prevailing*

The trial court determined Bellino failed to carry his burden on the second prong. We agree.

To meet its burden on the second prong, a plaintiff must show the cause of action has "minimal merit." (*Navellier v. Sletten* (2002) 29 Cal.4th 82, 88-89.) "Slander is a species of defamation. . . . 'A false and unprivileged *oral* communication attributing to a person specific misdeeds or certain unfavorable characteristics or qualities, or

uttering certain other derogatory statements regarding a person, constitutes slander.' [Citation.]" (*Nguyen-Lam v. Cao* (2009) 171 Cal.App.4th 858, 867.)

To prevail on a defamation claim, a plaintiff must show: defendant published the statement, the statement was about plaintiff, the statement was false, and the statement was defamatory; and, if the statement is not defamatory on its face, plaintiff suffered special damages. (*Wong v. Jing* (2010) 189 Cal.App.4th 1354, 1369.) Statements that are defamatory on their face and do not require proof of special damages include, as relevant here, a false statement that: "Tends directly to injure him in respect to his office, profession, trade or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profits[.]" (Civ. Code, § 46, subd. (3).)

To determine whether the statements at issue are provably false factual assertions, the court employs a totality of the circumstances test. "'"First, the language of the statement is examined. For words to be defamatory, they must be understood in a defamatory sense . . . . [¶] Next, the context in which the statement was made must be considered . . . . [¶] This contextual analysis demands that the courts look at the nature and full content of the communication and to the knowledge and understanding of the audience to whom the publication was directed."' [Citations.]" (*Seelig, supra,* 97 Cal.App.4th at pp. 809-810.) "Whether a statement is reasonably susceptible of a defamatory interpretation is a question of law for the court. [Citation.] 'Where the words or other matters which are the subject of a defamation action are of ambiguous meaning, or innocent on their face and defamatory only in the light of extrinsic circumstances, the plaintiff must *plead* and *prove* that as used, the words had a particular meaning, or "innuendo," which makes them defamatory.' [Citation.]" (*Gilbert v. Sykes* (2007) 147 Cal.App.4th 13, 33.)

To recap Beador's statements at issue, McDonald asked, "Do they still have the trampoline parks? Does anyone know?" The exchange continued as follows: "[Ms. Beador]: No. No. I heard that they don't. [¶] [Ms. McDonald]: They sold it? [¶] [Ms. Beador]: I heard they don't because they were sued. [¶] [Ms. McDonald]: So there wasn't, like, a lawsuit of someone that, that -- [¶] [Ms. Beador]: No, they were, they were sued. Kids . . . People [sic] get their . . . I won't let my kids go because people get paralyzed, and they, and apparently that happens."

Plaintiffs sued Beador for stating that "Bellino didn't have a trampoline business anymore because 'people get paralyzed' at that business." Plaintiffs further alleged people who heard the statements "reasonably understood that they were about . . . Bellino and reasonably understood them to mean that their [sic] had been accidents at Bellino's business that left those accident victims paralyzed."

Beador's first statement of "I heard they don't [have trampoline parks] anymore . . . because they were sued" is substantially true. Plaintiffs argue Beador's first statement falsely implies the lawsuit was more serious than it was, because they were not "forced" to sell or sued out of business, and still have an ownership interest in a Sky Zone location. They further argue that no one has been injured to the point of paralysis at Sky Zone. Evidence showed, however, Plaintiffs were sued in 2015 by a woman for personal injuries sustained at a JMCO trampoline park. The evidence also demonstrated Plaintiffs sold trampoline park locations thereafter. The phrase, "because they were sued" did not change the meaning of the sentence in the mind of any reasonable listener in this context. Beador was responding to McDonald's question about whether the Bellinos "still owned" the trampoline park. "I heard they don't because they were sued" truthfully communicated that Plaintiffs did not have that business anymore. Indeed, Plaintiffs do not dispute they were sued by a trampoline park patron who was injured, or that the Bellinos sold at least two locations of Sky Zone. Plaintiffs similarly do not contest that trampoline parks have undergone scrutiny for being dangerous.

Plaintiffs state in their briefing, without citation to the record, that "neither he nor his wife Alexis sold any interest in Sky Zone because they were sued." However, a "'simple negation of the challenged statement fails to fairly meet its substance.' [Citation.]" (*Industrial Waste & Debris Box Service, Inc. v. Murphy* (2016) 4 Cal.App.5th 1135, 1159.) In order to make a prima facie showing of the falsity of Beador's statement "I heard they don't . . . because they were sued," Plaintiffs must do more. They must provide the truth for the trial court to evaluate against Beador's evidence. They failed to do so. Plaintiffs did not disclose why they actually sold the location implicated by the personal injury lawsuit, and consequently fail to foreclose the possibility that the location was sold at least in part due to issues tied to the lawsuit, in other words, "because they got sued." By failing to provide necessary facts to prove the falsity of Beador's statement, a "suspicion that he is engaged in a deliberate evasion, which in turn raises the question whether he may not have found some way to reveal even less than appears, most obviously by attributing some secret and unexpected construction to the proposition thus seemingly denied." (*Vogel v. Felice* (2005) 127 Cal. App. 4th 1006, 1021-1022, fn. 5 (*Vogel*).

The *Vogel* court determined the statement, "'I do not owe my wife and kids thousands'" was insufficient to establish substantial falsity of the claim plaintiff "'owed thousands.'" (*Vogel*, *supra*, 127 Cal. App. 4th at pp. 1021-1022.) This was because ambiguity remained, which plaintiff could have been dispelled of had he stated how much he owed and when and how the debt or portions of it, were discharged. (*Ibid*.) Here, as in *Vogel*, Bellino's failure to plainly refute Beador's statement with facts indicating the truth was insufficient to establish the falsity of Beador's statement. Plaintiffs did not meet their burden.

As for Beador's statement, "I won't let my kids go because people get paralyzed, . . . apparently that happens[]," this is a true statement about Beador's refusal to let her kids go to trampoline parks because they are dangerous. Plaintiffs argue

Beador's statements are provably false facts with defamatory meaning, and that "people get paralyzed" is susceptible of defamatory implication. However, "'rhetorical hyperbole,' 'vigorous epithet[s],' 'lusty and imaginative expression[s] of . . . contempt,' and language used 'in a loose, figurative sense' have all been accorded constitutional protection. [Citations.]" (*Ferlauto v. Hamsher* (1999) 74 Cal.App.4th 1394, 1401.) Beador's statement, "I won't let my kids go because people get paralyzed" is interpreted as hyperbole—an overt exaggeration of the potential worst-case scenario of harm that could come from a trampoline park—rather than as a declarative statement of fact. Courts do not view the statements in isolation, it must be clear from the "'context and tenor' of the statement 'that the [speaker] seriously is maintaining an assertion of actual fact.' [Citation.]" (*Carver v. Bonds* (2005) 135 Cal. App. 4th 328, 343.) That was not shown here.

Plaintiffs argue the average listener would understand this statement to imply that people get paralyzed at Sky Zone because it was made after Beador commented on whether Plaintiffs still owned trampoline parks. This assumes too much. While Bellino may have been a limited public figure, it is unreasonable to assume the average listener would know what trampoline parks he held an interest in. Moreover, nowhere in the challenged statements are JMCO or Sky Zone even mentioned. There was no evidence nor allegation in the pleadings to suggest how or why anyone hearing the statements about Bellino being sued or having sold his interest in his "trampoline park" would presume this to be a statement about JMCO or Sky Zone.

Plaintiffs' argument that Beador's statements constitute slander per se under Civil Code, section 46 because they tend directly to injure Bellino in his business and profession are similarly unavailing. Plaintiffs made no showing of such causal injury. Bellino's conclusory declaration statements that "'visitors who regularly visit Sky Zone no longer do because they have heard that "people get paralyzed there"'" does nothing to link Beador to any purported loss of business.

Because we determine Plaintiffs failed to carry their burden on the second prong, we need not consider Bellino's argument that he presented adequate evidence of damages. The trial court properly granted Beador's anti-SLAPP motion as to claim 2.

IV. *Remaining Causes of Action*

Beador filed her anti-SLAPP motion against the entire complaint, rather than discrete causes of action. We now turn to the remaining causes of action.

Claim 3 for trade libel essentially mirrored claim 2, but was asserted by JMCO, not Bellino. For the same reasons already discussed in the context of claim 2, this cause of action similarly lacked merit. Beador did not mention JMCO or Sky Zone in her statements. Bellino offered no explanation as to why anyone hearing Beador's statements about Bellino being sued or having sold his interest in his trampoline park would equate this to be a statement about JMCO or Sky Zone.

Similarly, because we determine the trial court correctly granted Beador's anti-SLAPP motion as to claim 2, the court's denial was also proper as to claim 4. "When a false light claim is coupled with a defamation claim, the false light claim is essentially superfluous, and stands or falls on whether it meets the same requirements as the defamation cause of action. [Citations.]" (*Eisenberg v. Alameda Newspapers, Inc.* (1999) 74 Cal.App.4th 1359, 1385, fn. 13.)

In support of claims 5 and 6, Bellino argues JMCO maintained economic relationships with individuals who regularly attend Sky Zone. He asserts Beador knew about those relationships due to the popularity of Sky Zone, and her false statements were intentional acts to disrupt those relationships and did disrupt those relationships. As discussed above, however, Bellino failed to demonstrate Beador's statements were false. As a result, these claims also fail. The trial court properly granted Beador's anti-SLAPP motion it its entirety.

V. *Attorney Fees*

The anti-SLAPP statute provides a prevailing party "shall be entitled to recover his or her attorney's fees and costs." (§ 425.16, subd. (c)(1).) "A defendant that successfully moves to strike a plaintiff's cause of action, whether on merits or nonmerits grounds, has 'prevailed' on the motion, and therefore is entitled to attorney's fees and costs . . . ." (*Barry v. State Bar of California* (2017) 2 Cal.5th 318, 327.) We review a trial court's award of attorney fees for abuse of discretion. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1140.)

Beador sought an award of $220,894.55. After supplemental briefing on the issue, the trial court reduced the requested amount to $137,340.25.

Plaintiffs argue the fee award constituted an abuse of discretion. Not so. Here, Beador's counsel submitted detailed records demonstrating attorneys' billing on the anti-SLAPP motion. Beador submitted evidence showing the experience of her trial team. To the extent Plaintiffs appear to argue the large amount awarded on its face constituted an abuse of discretion, other courts have held a similar amount reasonable in connection with an anti-SLAPP motion. (*Church of Scientology v. Wollersheim* (1996) 42 Cal.App.4th 628, 658 [affirming attorney fee award of $130,506.71].) After considering the complexity of the case, the reasonableness of attorneys' rates, and the procedural history, the trial court reduced the requested fee award by 46 percent. Plaintiffs failed to demonstrate how this constituted an abuse of discretion, and we will not reweigh the evidence considered by the trial court. (See *City of Alhambra*, *supra*, 193 Cal.App.4th at p. 1307.)

DISPOSITION

The orders are affirmed. Beador shall be awarded her costs on appeal.

O'LEARY, P. J.

WE CONCUR:

FYBEL, J.

GOETHALS, J.